

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

|                              |   |               |
|------------------------------|---|---------------|
| PRODUCTIVE MD, LLC           | ) |               |
|                              | ) | No. 3-12-0052 |
| v.                           | ) |               |
|                              | ) |               |
| AETNA HEALTH, INC; and AETNA | ) |               |
| LIFE INSURANCE COMPANY, INC. | ) |               |

ORDER

As scheduled during the hearing on November 27, 2012, a further hearing was held on January 18, 2013, at which time the following matters were addressed:

1. The plaintiff's motion to amend its complaint (Docket Entry No. 92) was granted and the defendants were given until February 8, 2013, to file a response to the plaintiff's second amended complaint (Docket Entry No. 98). See order entered January 22, 2013 (Docket Entry No. 97).

2. In response to plaintiff's concerns that the defendants could raise his not having named the individual plans as defendants, defendants' counsel confirmed that the defendants have not raised the fact that the plans are not named as defendants and do not consider it an issue that would be used as a defense in this case.

3. In accord with the order entered October 9, 2012 (Docket Entry No. 64), the defendants have served a proposed complete administrative record.

4. The plaintiff's motion to amend order regarding review and filing (Docket Entry No. 95) is GRANTED to the extent that the deadline for the plaintiff to complete its review of the proposed administrative record, as set out in the October 9, 2012, order, is extended, and an extended deadline will be established by further order.

5. The defendants shall have until February 8, 2013, to otherwise respond to the plaintiff's motion for an order specifying content of the administrative record (Docket Entry No. 95).

6. Counsel for the parties shall confer on the following issues: (1) the plaintiff's proposal to take a sampling of cases and address threshold issues; (2) whether additional documents

should be included in the administrative record; and (3) any additional discovery that the plaintiff believes necessary.

7. A further hearing is scheduled on **Tuesday, February 12, 2013, at 10:00 a.m.**, in Courtroom 764, U.S. Courthouse, 801 Broadway, Nashville, TN, to address briefing deadlines for the defendants' anticipated motion to dismiss, whether the parties have been able to agree upon a methodology for an efficient resolution of the threshold legal issues,<sup>1</sup> the plaintiff's motion for order specifying content of the administrative record (Docket Entry No. 95) and the parties' position(s) on the contents of the administrative record, an extended deadline for the plaintiff to complete its review of the defendants' proposed administrative record, if necessary, whether the motion to sever (Docket Entry No. 86) should be addressed or should be deferred until closer to the trial, the status of the defendants' responses to the plaintiff's discovery requests as directed by the Court, what discovery issues remain, and any other appropriate matters.

It is so ORDERED.

  
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JULIET GRIFFIN  
United States Magistrate Judge

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<sup>1</sup> Threshold legal issues include (1) standing/propriety of assignment of the claims, including (a) whether ERISA claims may be assigned to a healthcare provider; (b) whether the form used by the plaintiff and patients constitutes an effective assignment; (c) whether assignment is prohibited by the terms of the plan(s); and (d) whether the defendants have waived any defense of standing or prohibition of assignment, (2) exhaustion, and (3) preemption.